IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 319 (M/S)/2006

Bahadur Singh Rautela
S/o Sri Karak Singh Rautela
Tehsil-Gangolihat,
District Pithoragarh. .....Petitioner

Versus

1. District Judge, Pithoragarh, District Pithoragarh.
2. Bhagawat Singh S/o Sri Diwan Singh, R/o Vill. & P.O. Rautela, Tehsil Gangolihat District Pithoragarh.
3. The Election Officer Pithoragarh.
4. The Returing Officer (Zila Panchayat by-election 2005), Pithoragarh.
5. The Panchay Raj Adhikari, Pithoragarh.
6. Sri Govind Singh Bisht S/o Sri Narayan Singh Bisht R/o Vill. Sukhola P.O. Sinlekh Tehsil – Gangolihat, District Pithoragarh.
7. Sri Govind Singh Khati S/o Sri Nain Singh Khati R/o Vill. Salaini (Sragarh) P.O. Nauchauna Tehsil Gangolihat District Pithoragarh.
8. Sri Diwan Singh S/o Sri Keshar Singh R/o Village & P.O. Bungli Tehsil Gangolihat District Pithoragarh.
9. Sri Padam Singh S/o Sri Nain Singh R/o Vill. Sugarhi P.O. Chaurpal Tehsil – Gangolihat, District Pithoragarh.
10. Sri Raju Giri S/o Sri Ganesh Giri R/o Vill.Chamdungara P.O. Rarikhuti, Tehsil – Gangolihat, District Pithoragarh.
11. Sri Ram Singh S/o Sri Ratan Singh R/o Banelagaon, P.O. Sinlekh, Tehsil Gangolihat, District Pithoragarh.
12. Sri Shyam Singh S/o Shri Dan Singh R/o Vill. Nanoli (Kairna) P.O. Chorpal Tehsil Gangolihat, District Pithoragarh.
13. Sri Subhash Chandra Kohali S/o Shri Hari Ram Kohai R/o Vill. Devrala P.O. Pawadher Tehsil Gangolihat District Pithoragarh.
14. Sri Suresh Chandra Joshi S/o Shri Hari Dutt Joshi R/o Vill. Shimana P.O. Chorpal Tehsil Gangolihat, District Pithoragarh. ..... Respondents

24.04.2006

Sri B.S. Khanka, learned counsel for the petitioner,
Learned Standing Counsel for the respondent No.1 and
Sri Rajendra Dobhal, Learned Counsel for the respondent No.2.

Hon'ble Rajesh Tandon, J.

Heard Sri B.S. Khanka, learned counsel for the petitioner, Learned Standing Counsel for the respondent No.1 and Sri Rajendra Dobhal, Learned Counsel for the respondent No.2.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 03.02.2006 passed by the District Judge, Pithoragarh.

Briefly stated according the case of the petitioner, District Judge, Pithoragarh has dismissed the petitioner's election petition no. 63 on 03.02.2006 under Order VII Rule 11 of C.P.C. Petitioner has submitted that Government of Uttaranchal has made a notification for the election of member of Zila Panchayat Pithoragarh. The petitioner has alleged that he has contested the said election and fulfills the requisite qualification. He has also preferred an objection for the election of the respondent no.2 as he is holding the post of profit from Government benefit and the objection was filed before District Election Officer, Pithoragarh on 30.06.20005 but the election officer has not taken any action against the respondent no.2 and he has won the Panchayat Raj Election.

Election petition has been rejected on the ground that petitioner has neither appeared before the Court nor he has mentioned about the cause of action.

Counsel for the respondents has filed the Counter Affidavit stating therein that none appeared on behalf of the petitioner before the trial Court. Further it has been observed that material facts have also not been disclosed by the petitioner in his election petition before the trial court, therefore the trial court left with no option, except to dismiss the election petition of the petitioner under Order VII Rule 11 of C.P.C.

It is pertinent to mention that against the impugned order, the petitioner is having the remedy in both the ways, one is under Rule

11(1)(e) of U.P. Zila Panchayat (Settlement of Dispute Relating to membership) Rules, 1994 and another, he may file a restoration application under Order IX Rule 9 of C.P.C. before the trial Court.

In view of the above, petitioner is directed to submit a fresh application before the Presiding Officer for recalling the order within a period of two weeks. Liberty is given to the petitioner to file the application and the same shall be disposed of within a period of six weeks from the date of production of the certified copy of the order.

Subject to the aforesaid observations, writ petition is disposed of.

(Rajesh Tandon, J.)

24.04.2006
Jain